was therefore on default, for the judgment-creditor to apply to have the order as to payment by instalments rescinded. This he did not do until after the order for attachment had issued.

Appeal dismissed with costs. Costs to be set off under section 219 of the Civil Procedure Code.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

HOWES, J.

August 3, 1934.

S. P. L. R. M. RAMASAMY CHETTIAR..... Appellant.

vs.

NORDIN BIN UDA SHUKOR.....Respondent.

[PERAK MAGISTRATES' CIVIL APPEAL No. 22 of 1934]

The Civil Procedure Code, 1918, Section 208—Payment of amount decreed by instalments—Principle on which such payment is granted.

The discretion given to the Court by section 208 of the Civil Procedure Code, 1918, is a judicial discretion and cannot be exercised in an arbitrary manner.

What is a "sufficient reason" under that section must depend on the facts of the particular case. The Court should consider the circumstances in which the debt was contracted, the conduct of the debtor, his financial position and so forth.

The fact that the debtor is an agriculturist, and consequently by virtue of the provisions of section 265 (i) (c) of the Civil Procedure Code, the land immediately appurtenant to his house would not be liable to attachment, is irrelevant to an application for payment by instalments under section 208.

Decision in *Muthupalaniappa Chettiar* v. *Mohamed Yusof*, (1931-1932) F.M.S.L.R. 231, followed.

H. G. Nelson for the appellant.

Respondent in person.

Cur. Ad. Vult.

HOWES, J.—This is an appeal from the order of the Magistrate, Ipoh, by which, on the application of the defendant, it was ordered that the judgment debt of $135/- and costs should be paid by instalments of $5/- a month as from the 10th June, 1934. The original claim was for $149.60 and costs, but the plaintiff consented to judgment for $135/- and costs.

The order was made under section 208 of the Civil Procedure Code which as amended reads:—

> "Where and in so far as a decree is for the payment of money, the Court may at any time and for any sufficient reason, notwithstanding anything contained in the contract (if any) under which the money is payable, order that payment of the amount decreed shall be postponed or made by instalments on such terms as to the payment of interest, the attaching of the property of the judgment-debtor, or the taking of security from him, or otherwise, as the Court thinks fit. Provided that no such order shall be made without due notice to the decree holder."

The grounds of appeal shortly are:—

1. The Magistrate, in making the order, did not exercise in a proper and judicial manner the discretion conferred on him by section 208 (*supra*) in that:—

   (a) No sufficient reason was shown by the defendant why he should be permitted to pay the judgment debt by instalments.

   (b) The rights of the plaintiff under his judgment were disregarded.

   (c) The order for instalments should not have been made in view of the fact that the defendant had deposited a Grant for land, as security for the debt.

   (d) That the consideration of section 265 of the Code by the Magistrate (in his grounds of judgment) was irrelevant on the hearing of an application under section 208.

2. The Magistrate ought not to have made an order for payment by instalments which, in order to pay off the debt, would continue for over 29 months, without providing that in default of payment of any instalment, the plaintiff be at liberty to proceed to execution.

In his grounds of judgment, the Magistrate seems to have based his order solely on the fact that because the defendant is an agriculturist, under section 265 (i) (c) of the Civil Procedure Code, the land immediately appurtenant to his house would not be liable to attachment. The order was not based on the ground of the poverty of the defendant, although in the grounds of

judgment it is said " he owns no other property, movable or immovable."

The fact that the defendant is an agriculturist is a factor which the Magistrate is entitled to take into consideration, if the plaintiff had applied for execution by attachment; but upon a defendant's application for payment of the judgment debt by instalments under section 208, any reference to section 265 appears to be irrelevant. Since the defendant had deposited his title as security for the original loan, the order to pay by instalments is a clog on the plaintiff's right to exercise his lien and thereby deprives him of his right to enforce his judgment against the land, so long as the instalments are paid.

Reverting to section 208, the discretion given to the Court by this section to allow payment by instalments is a judicial discretion, and cannot be arbitrarily exercised. As stated by Burton, J., in *Muthupalaniappa Chettiar* v. *Mohamed Yusof bin Haji Ahmad Ee Tin*, (1931-1932) F.M.S.L.R. 231, at page 232:—

> " The Magistrate purported to act under section 208 of the Civil Procedure Code, and of course he has a perfect right in a proper case to make an order for instalments under that section, and to vary it or rescind it when made. But the Magistrate must act according to correct principles,.....Section 208 (i) of the Civil Procedure Code contains the words " for any sufficient reason " and the Magistrate must bear in mind that the creditor has equal claim to consideration with the debtor. I do not think poverty of itself could be regarded as a sufficient reason (see *Binda* v. *Madho*, I.L.R. 2 All. p. 129) for that would suffice in most suits to justify an order for instalments. The order for instalments is a definite derogation from the legal right of the decree holder to immediate execution, and must only be made in exceptional circumstances, and the decree holder is always entitled to be heard."

What is a " sufficient reason " must depend on the facts of the particular case. The Court should consider the circumstances in which the debt was contracted, the conduct of the debtor, his financial condition and so forth. Instalments should be ordered where the defendant shows his *bona fides* by offering to pay anything like a fair proportion of his debt at once. In his affidavit in support of the application for payment by instalments, this defendant alleged he had two other creditors whose claims amount to $150/-; that his only source of income is rubber producing an average output of 4 katties (presumably per day), and that he had a wife, 3 children, a grandchild, a cousin and a niece to support. He offered to pay by instalments of $2/- a month. It was upon these statements that the Magistrate ordered the instalments of $5/- a month.

Where the discretion of the lower Court has been properly exercised, an appellate Court will be slow in interfering: but in this case, by deciding mainly on the fact that the defendant was an agriculturist and that in consequence his land was not liable to be attached, I consider the Magistrate was acting on a wrong principle.

At the same time, in view of the small amount of the debt and the circumstances, I think this is a case in which instalments could be legitimately ordered provided the plaintiff's interest is safe-guarded. According to the defendant's affidavit, at the time he executed the promissory note on which the claim was based, only $58/- was owing on an original promissory note for $100/- dated 23-6-28 for which the present promissory note was substituted on 7-5-31. If this be so, it is not surprising that the lower Court had little sympathy with the plaintiff.

I allow the appeal, and amend the order of the Magistrate to this extent:—

> The defendant to pay the judgment debt and costs by instalments of $5/- a month as from 10.6.34 with interest at the rate of 8% per annum till satisfaction. Defendant to pay the three instalments now due, on or before 10.8.34, and $5/- on or before the 10th of each subsequent month until satisfaction. In default of payment of any instalment, the plaintiff to be at liberty to proceed to execution.
>
> Defendant to pay a proportion of the plaintiff's costs of this appeal which I assess at $30/-.

Appeal allowed.